IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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R.S.A. No.3248 of 2002
Date of Decision:16.10.2007

Zora Singh and others

.....Appellants

Vs.

Devinder Singh and others

.....Respondents

CORAM:- HON'BLE MR. JUSTICE RAJESH BINDAL

Present:- Mr. R.K.Battas, Advocate for the appellants.

Mr. V.K.Shukla, Advocate for respondents No.1 and 2.

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Rajesh Bindal, J.

The plaintiffs are in second appeal before this Court against concurrent finding of facts by both the Courts below wherein suit filed by them for possession by way of specific performance was partly decreed and only alternative relief was granted to the appellants- plaintiffs for recovery of Rs.30,000/-, i.e. Rs. 15,000/- on account of earnest money paid and Rs.15,000/- on account of damages, in view of the terms of the agreement.

Birefly the facts, as noticed by the Courts below are that the appellants- plaintiffs filed a suit for possession by way of specific performance of agreement dated September 13, 1989 for the land measuring 11 kanals 4 marlas, i.e., ¼th share of the land described in the plaint or in the alternative suit for recovery of Rs. 30,000/-, i.e. refund of Rs. 15,000/- paid as earnest money and Rs.15,000/- as damages as per the conditions of the agreement. The agreement to sell itself provided that in case the vendor failed to get the sale deed executed, he shall be liable to pay total amount of Rs. 30,000/- and, accordingly, in terms thereof, the suit was decreed. In appeal before the First Appellate Court also the appellants failed when the Court opined that the agreement to sell sought to be enforced by the appellants was hit by provisions of Section 23 of the Indian Contract Act, as, requisite permission was not obtained by the vendee, the employer being a government servant. It was further opined that the buyers of the property were bonafide purchasers without notice of the alleged agreement to sell

and, accordingly, the learned trial Court had rightly granted the alternative relief to the appellants which is also in terms of the agreement to sell and the prayer made in the suit. Even before this Court, no material has been pointed out from the evidence on record to show that the view expressed by the learned Court below is not legally sustainable in the facts and circumstances of the present case. The appeal can be entertained only on a substantial question of law which, in my opinion does not arise in the present case. Accordingly, the same is dismissed.

October 16, 2007 **(RAJESH BINDAL)**
renu **JUDGE**